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7 AMANDA HOUGHTON, et al.,
8 Plaintiffs,
9 v.
10 ROBERT LESHNER, et al.,
11 Defendants.

Case No. [22-cv-07781-WHO](#)

**ORDER APPOINTING LEAD
PLAINTIFF AND LEAD COUNSEL**

Re: Dkt. No. 47

12 Plaintiffs Amanda Houghton, Charles Douglas, and Susan Franklin (“Plaintiffs”) move
13 under 15 U.S.C. § 77z-1(a)(3),¹ seeking appointment as Lead Plaintiff and approval of their
14 selection of Gerstein Harrow LLP and Fairmark Partners LLP as Lead Counsel for a class of
15 people who purchased COMP, a cryptocurrency asset.² *See* Complaint, (Dkt. No. 1) ¶¶ 4, 188.
16 This matter is appropriate for resolution on the papers and the hearing on March 15, 2023 is
17 hereby VACATED. *See* Civ. L.R. 7-1(b).

18 Plaintiffs have satisfied the PSLRA notice requirement³ and are the only plaintiff or
19 plaintiff group who has moved for appointment. Under the PSLRA, there is rebuttable
20 presumption that Plaintiffs are the “most adequate” given that they filed the Complaint, made a
21 motion for appointment, and appear to satisfy Fed. R. Civ. Proc. 23 requirements.⁴

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23 ¹ Private Securities Litigation Reform Act or “PSLRA.”

24 The plaintiffs seek appointment under the PSLRA to represent the following class: “all people
25 who purchased or obtained COMP on or after December 8, 2021, while excluding from the class
Defendants; corporate officers, members of the boards of directors, and senior executives of
26 Defendants; members of their immediate families and their legal representatives, heirs, successors
or assigns; and any entity in which Defendants have or had a controlling interest.” Compl., ¶ 188.

27 ³ *See* Declaration of Jason Harrow (Dkt. No. 47-1) ¶ 4.

28 ⁴ 15 U.S.C. § 77z-1(a)(3)(b)(iii) provides:
Rebuttable presumption

1 No other plaintiff or plaintiff group has come forward to be appointed. However, the
 2 defendants who have appeared in this action oppose the appointment of these Plaintiffs.⁵ These
 3 “Partner Defendants” argue, assuming without admitting and reserving their rights to challenge
 4 whether the PSLRA governs COMP or this case,⁶ that Plaintiffs are inadequate under the PSLRA
 5 because their financial interest in COMP is negligible. The Partner Defendants allege that the
 6 Plaintiffs combined spend to purchase COMP tokens was only \$80. Oppo. at 2.

7 The Partner Defendants rely on a few cases where district courts have rejected proposed
 8 PSLRA Lead Plaintiffs, given the proposed Lead Plaintiff’s minimal investment. *See, e.g.*,
 9 *McCormack v. Dingdong (Cayman) Ltd.*, 2022 WL 17336586, at *5 (S.D.N.Y., 2022) (denying
 10 unopposed appointment of a plaintiff who had suffered only \$500 in losses, where plaintiff
 11 submitted only “a pro forma certification that includes no details about his background, years of
 12 investing experience, or other indicia of sophistication,” where plaintiff’s particular losses might
 13 not be recoverable, and where the PSLRA notice was deficient); *Guo v. Tyson Foods, Inc.*, 2022
 14 WL 5041798, at *5 (E.D.N.Y. Sept. 30, 2022) (denying motion for appointment of lead counsel
 15 where two movants together alleged a “nominal” “combined total loss of \$323.20”); *Bosch v.*
 16 *Credit Suisse Grp. AG, Inc.*, 2022 WL 4285377, at *6 (E.D.N.Y. Sept. 12, 2022) (a plaintiff did
 17

18 (I) In general Subject to subclause (II), for purposes of clause (i), the court shall adopt a
 19 presumption that the most adequate plaintiff in any private action arising under this subchapter is
 20 the person or group of persons that--
 21 (aa) has either filed the complaint or made a motion in response to a notice under
 22 subparagraph (A)(i);
 23 (bb) in the determination of the court, has the largest financial interest in the relief sought
 24 by the class; and
 25 (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil
 26 Procedure.

27 (II) Rebuttal evidence
 28 The presumption described in subclause (I) may be rebutted only upon proof by a member
 29 of the purported plaintiff class that the presumptively most adequate plaintiff--
 30 (aa) will not fairly and adequately protect the interests of the class; or
 31 (bb) is subject to unique defenses that render such plaintiff incapable of adequately
 32 representing the class.

5 Defendants who have appeared are alleged to be “Partner Defendants” who control more than 50% of the COMP tokens. Defendant Compound DAO (a general partnership) has not appeared in this action. Comp. ¶ 2.

6 Opposition (Dkt. No. 55) at 1 n.2.

1 not “preliminarily satisfy the adequacy requirement of Rule 23(a)” where the plaintiff claimed
2 only \$621 in losses and therefore “lack[ed] a sufficient financial interest in the outcome of the case
3 to incentivize him to monitor counsel’s performance and control the litigation on behalf of the
4 putative class.”). The Partner Defendants contend appointment of Plaintiff with their minimal
5 fiscal interest is contrary to the purposes of the PSLRA and makes these Plaintiffs atypical and
6 inadequate as better suited larger, institutional investors would better represent the class.

7 Plaintiffs point, instead another recent decision. *Nayani v. LifeStance Health Group, Inc.*,
8 2022 WL 16985717, at *3 (S.D.N.Y., 2022). There, the Hon. Jed Rakoff appointed a Lead
9 Plaintiff who pleaded only \$385 in damages (over a plaintiff who suffered 608 in damages but was
10 subject to a unique defense). He rejected the defendants’ argument that plaintiffs with small or
11 modest alleged loses should not be appointed Lead Plaintiffs under the PSLRA, as that argument
12 “is at odds with both the text and the purpose of PSLRA, not to mention one of the main purposes
13 of aggregate litigation itself. Even if all moving plaintiffs have only a small financial interest at
14 stake, one of the movants might nonetheless satisfy Rule 23’s adequacy requirement if he
15 demonstrates his willingness and ability to represent the interests of the class.” *Id* at *5. The
16 court was satisfied that the plaintiff with an alleged loss of \$385 was otherwise adequate under
17 Rule 23 because he selected a “well-known player in securities class actions,” had demonstrated a
18 willingness and ability to supervise counsel on behalf of the class, and had experienced
19 negotiating with and managing attorneys. *Id.*; *see also Fagen v. Enviva Inc.*, 2023 WL 1415628,
20 at *3 (D.Md., 2023) (appointing movant with “relatively modest” \$781 in losses where plaintiff
21 attested to “his investing experience, his motivation to recover losses experienced by himself and
22 the class, his understanding of the responsibilities of a lead plaintiff, his commitment to working
23 with counsel and attending matters related to the prosecution of this litigation on behalf of the
24 class”).

25 Here I find that the Plaintiffs are not disqualified by the small size of their alleged losses.
26 Indeed, Plaintiffs explain why – given the design of the DAO and the alleged majority ownership
27 of the Partner Defendants and decentralized distribution, Compl. ¶¶ 76, 176 – institutional or other
28 large investors are unlikely to step forward in this case. See also Oppo. at 10-12. I also find that

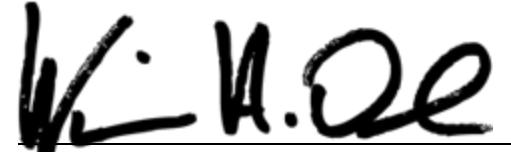
1 the Plaintiffs nominally satisfy Rule 23's typicality and adequacy requirements. While the
2 declarations from Plaintiffs are identical and *pro forma*, no other argument and no evidence has
3 been raised by the Partner Defendants or anyone else regarding these Plaintiffs' adequacy.

4 On this record and at this juncture, I find Amanda Houghton, Charles Douglas, and Susan
5 Franklin ("Plaintiffs") are facially adequate for appointment as Lead Plaintiff. I also approve of
6 Plaintiffs selection of Gerstein Harrow LLP and Fairmark Partners LLP as Lead Counsel.
7 Plaintiffs' counsel have outlined their experience in cryptocurrency and complex class action
8 litigation. *See generally* Harrow Decl., 47-1. The Partner Defendants have not raised any reason
9 why that counsel might not competently represent Lead Plaintiff and the class and I see none.

10 A Case Management Conference is set for April 11, 2023, at 2:00 p.m. The Joint Case
11 Management Conference Statement shall be filed by April 4, 2023. It shall include, among other
12 things, a proposed trial calendar.

13 **IT IS SO ORDERED.**

14 Dated: March 13, 2023



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16 William H. Orrick
17 United States District Judge
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